IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 649 of 2006
With
CIVIL APPLICATION No. 4510 of 2006
With
LETTERS PATENT APPEAL No. 402 of 2006
With
CIVIL APPLICATION No. 3106 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHVINKUMAR D TRIVEDI - Appellant(s)
Versus
NALINIBEN BHAVANDAS POPATANI & 6 - Respondent(s)

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Appearance :
MR NIRUPAM NANAVATI SR ADVOCATE WITH MR RC JANI for Appellant(s) : 1,
MR YN OZA SR ADVOCATE WITH MS SONAL R SHAH for Respondent(s) : 1,
None for Respondent(s) : 2 - 3
MS ARCHANA RAVAL AGP for Respondent(s) : 4,
NOTICE SERVED BY DS for Respondent(s) : 5,
MR SI NANAVATI WITH MR DG SHUKLA FOR Respondent (s): 6, 7

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 02/05/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Both the appeals are admitted and the learned advocates for the respective respondents waive service of notice. With the consent of the learned counsel for the parties, the appeals are taken up for final disposal today.

2. Mr Nanavati, learned counsel for the appellant has submitted that neither the provisions of the BPMC Act nor the provisions of the Bombay Primary Education Act require the Corporation to appoint the Administrative Officer only by direct selection. On the contrary, the provisions of the Act as well as the regulations framed under Section 17(3) of the Bombay Primary Education Act, 1947 are silent on the question of mode of appointment and that it is always open to the Corporation, subject to the approval of the State Government, to resort to any mode of appointment as may be considered suitable by the Corporation. It is, therefore, submitted that the learned Single Judge erred in passing the mandatory interim order directing the Corporation to fill in the post of Administrative Officer only by direct recruitment.

Mr Nanavati further submitted that earlier also Special Civil Application No.4642 of 2005 was

filed as a PIL and the Division Bench hearing PIL petitions had disposed of the same by passing order dated 18.3.2005 in the following terms:-

> "After hearing the counsel for both the sides, we find that the appointment of Respondent No.5 (Dr. Ashwinkumar D Trivedi) vide order dated November 30, 2004 is temporary, subject to approval by the competent authority in terms of section 22(2) of the Bombay Primary Education Act, 1947. Procedure is being initiated as per law and it is expected that the regular appointment will be finalized within three months. Petition is dismissed.
>
> Sd/-
> (Bhawani Singh Chief Justice)
> sd/-
> (H.K. Rathod, J.)"

It is submitted that in view of the above direction of the Division Bench also, the present petition was not required to be entertained.

3. On the other hand, Mr Oza, learned counsel for the original petitioners submitted that neither the Act nor the recruitment regulations permit the Corporation to make any appointment by promotion. It is submitted that the appellant is even otherwise not eligible for appointment to the post of Administrative Officer as he does not have ten years' experience in teaching, supervision and administration under the Ahmedabad Municipal Corporation.

It is also submitted that the Municipal School Board has no authority to make any appointment or give any promotion and under the Act it is the Corporation which is the competent authority and which can make appointment subject to approval by the State Government. It is also submitted that the claim of other officers is not being considered.

4. Section 4(2) of the BPMC Act, 1949 provides that the duties imposed on the Corporation in respect of primary education shall be performed in accordance with the provisions of the Bombay Primary Education Act, 1947, (Bom. LXI of 1947.) and for the purposes of the said Act the Corporation shall be deemed to be an authorised municipality within the meaning of the said Act with power to control all approved schools within the city, and to appoint an Administrative Officer.

Section 21 and 22 of the Primary Education Act, 1947 read as under:-

> "**21**. **Administrative Officer**- (1) For every school board there shall be an Administrative Officer. He shall be the chief executive officer of the board; his powers and duties shall be as prescribed.
>
> (2) The Administrative Officer shall be appointed by and shall be a servant of the State

Government. He shall draw his pay and allowances from the State revenues.

22. Delegation of power to appoint Administrative Officer to certain authorised municipalities. - (1) Notwithstanding the provisions of section 21, the State Government may by notification in the Official Gazette delegate the power to appoint and Administrative Officer to an authorised municipality which is a municipality constituted under the Bombay Municipal Boroughs Act, 1925 (Bom.XVIII of 1925), (or the Act as adapted and applied to the Saurashtra areas of the State and the annual expenditure of which on primary education is not less than Rs.1,00,000 for three financial years immediately preceding the date of notification. The Administrative Officer so appointed shall be the servant of the authorised municipality and shall draw his pay, allowances, provident funds, gratuity and pension from its primary education fund.

(2) The appointment of such Administrative Officer shall be made after inviting and considering the suggestions, if any, of the municipal school board and with the approval of State Government. No such officer shall, save with the provision sanction of the State Government, be removed from his office, reduced or suspended except by a resolution passed by atleast two-thirds of the whole number of councilors of the authorised municipality.

(3) The qualifications, pay, allowances and terms of employment of such Administrative Officer shall be in accordance with the regulations framed by the authorised municipality with the sanction of the State Government."

(emphasis supplied)

5. In view of the aforesaid statutory provisions, particularly sub-section (2) of Section 21, subject to the delegation of power under Section 22, the power of approval for appointment of Administrative Officer is conferred on the State Government. While issuing notice on 24.4.2006, this Court thought it fit to call upon the State Government to indicate its stand on the controversy which is the subject matter of the present appeal.

At the hearing today, Ms Archana Raval, learned AGP has placed on record a note signed by Mr SV Garasia, Dy. Secretary (PE) Education Department of the State Government wherein, after referring to the relevant statutory provisions, the following view of the State Government is expressed: -

> "AMC can appoint a person to the post of Administrative Officer by direct selection or deputation or promotion provided the person is a trained graduate and holder of 10 years experience in teaching, supervision and administration and AMC obtains the approval of the State Government to do so."
>
> (emphasis supplied)

6. In absence of any specific provision in the BPMC Act and the Bombay Primary Education Act, 1947 requiring the Corporation to make appointment to the post of Administrative Officer only by direct

selection, the Corporation could not have been prevented by mandatory interim order to fill in the post of Administrative Officer by direct selection only. In this view of the matter, the order under appeal is required to be set aside. Setting aside of the said interim order passed by the learned Single Judge is, however, not to be treated as expression of any opinion by us and it is for the Ahmedabad Municipal Corporation, subject to the approval of the State Government, to consider the question whether the post of Administrative Officer should be filled in by direct selection or deputation or promotion. It will be open to the original petitioners to submit their representation to the Corporation on this aspect and the Corporation shall consider the representations, if made within ten days from today. The Corporation shall take final decision in the matter within two months from today and thereafter submit the proposal to the State Government within two weeks thereafter. The State Government will thereafter take its decision within two months. In short, the entire process of the Corporation taking appropriate decision and the Government according its approval or otherwise on the question of appointment of Administrative Officer under the Ahmedabad Municipal Corporation shall be completed latest by 30th September 2006.

It is clarified that this Court has not

expressed any opinion on the question of the mode of appointment to be adopted by the Corporation, subject to approval of the State Government, nor on the question of eligibility or otherwise of the appellant herein for the post of Administrative Officer.

7. Accordingly LPA No.649 of 2006 is allowed and the interim order dated 28.11.2005 of the learned Single Judge is set aside. The Corporation as well as the State Government shall consider the matter about appointment of Administrative Officer of the Ahmedabad Municipal Corporation within the time limit stipulated in para 6 of this judgment.

8. In view of the aforesaid order, LPA No.402 of 2006 will also have to be allowed and the order dated 17.1.2006 passed by the learned Single Judge restraining the Corporation from considering the matter for grant of approval to the resolution of the municipal school board is set aside, meaning thereby, the Corporation is at liberty to consider the matter about appointment of Administrative Officer of the Ahmedabad Municipal Corportaion in light of the observations made hereinabove and within the stipulate time-limit.

9. The civil applications also accordingly stand disposed of.

10. At this stage, Ms Sonal Shah for Mr Oza for the original petitioners prays for stay of operation of this judgment.

11. In the facts and circumstances of the case, we do not find any justification for staying the operation of the order. The request is, therefore, rejected.

(M.S. SHAH, J.)

(HARSHA DEVANI, J.)

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